

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3522 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JP MASTER

Versus

ADMINISTRATIVE OFFICER, EDUCATION COMMITTEE, DIST.
PANCHAYAT, AHMEDABAD & OTHERS.

Appearance:

MR SANJAY M AMIN for the Petitioner
MR JITENDRA M PATEL for Respondent No. 1
MR NIGAM SHUKLA for Respondents No. 2 & 3.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner has been ordered to be compulsorily retired from the services after holding the departmental inquiry on the misconduct alleged against him. The petitioner has challenged that order before the Tribunal, but the Tribunal has also declined to interfere in the matter.

Hence, this Special Civil Application.

2. The learned counsel for the petitioner firstly contended that the order of penalty has been passed by the Administrative Officer and not by the District Development Officer who was the appointing authority of the petitioner. The second contention has been made that the departmental proceeding has been made under the provisions of Bombay Primary Education Act, 1947 and the Discipline and Appeal Rules of the Panchayat Service servants, and as such the same are bad in law.

3. I find no substance in any of the contentions. The petitioner has not raised any objection that the order of compulsory retirement has been made by the authority lower in rank instead of the appointing authority. The very fact that the petitioner has not raised this plea before the Tribunal he cannot be allowed to raise this plea before this Court. It cannot be said to be a pure question of fact, but it is a mixed question of law and fact. Apart from this, from the Discipline and Appeal Rules of the Panchayat Services servants it is clear that the Administrative Officer was the disciplinary authority for the post which the petitioner was holding at the relevant time. In view of this fact, otherwise also there is no substance in this contention. The second contention is also devoid of any substance. The learned counsel for the petitioner is unable to point out how any prejudice has been caused to the petitioner. It is a case where the penalty has been provided under Rule 5 of the Discipline and Appeal Rules. While making the final order, the reference has been made to Sec. 24 of the Bombay Primary Education Act, but merely by giving of this reference, it is difficult to say that the proceedings are bad in law. The learned counsel for the petitioner is unable to make out any case that how the proceedings are bad in law. The procedure has to be followed and that has been followed. The petitioner has been given full opportunity of producing his defence.

4. Taking into consideration the totality of the facts of this case, I do not find any substance in this Special Civil Application. The order made by the Tribunal does not call for any interference.

5. In the result, this Special Civil Application is dismissed. Rule discharged.

zgs/-

